



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 22.03.2017
(Reserved on 17.03.2017)
CORAM :

WEB COPY

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP (PD) (MD) No.512 of 2017
and
CMP (MD) No.2395 of 2017

M.Selvakumar

... Petitioner

vs.

1) Mariammal

2) Arulmigu Sarkarai Vinayar Kovil,
Through its Trustee,
Pettai,
Tirunelveli-4.

... Respondents

Prayer:- Civil Revision Petition filed the under Article 227 of Constitution of India, against the fair order in I.A.No.396 of 2016 in O.S.No.366 of 2013 dated 01.12.2016 by the 1st Additional District Munsif Court, Tirunelveli.

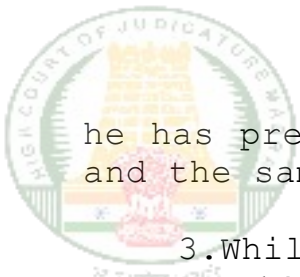
For Petitioner : Mr.P.Senthur Pandian

For Respondents : Mr.V.Meenakshisundaram

ORDER

This revision petition is filed against the dismissal of the amendment petition filed by the revision petitioner in his suit O.S.No.366/13. Originally, the suit was filed for permanent injunction against the landlord and the tenant, on the ground that the revision petitioner is a transferee of tenancy rights under the original tenant. Later, he sought for an amendment of his prayer into delivery of vacant possession of the suit property evicting the 2nd respondent/2nd defendant (landlord) from the suit property.

2.The case of the revision petitioner is that the suit property which is owned by the 2nd defendant was let out for rent to the 1st defendant Mariammal and she had been enjoying the property as a cultivating tenant protected under the Tamil Nadu Cultivating Tenants (Protection) Act, 1955. While so, in the eviction proceedings initiated by the landlord before the revenue authority in TCTP.No.14 of 2007, the revision petitioner filed an application to get himself impleaded as a party respondent, which was dismissed by the revenue authority. Against the said order,



he has preferred a revision before this Court in CRP(MD)No.574/16 and the same is pending.

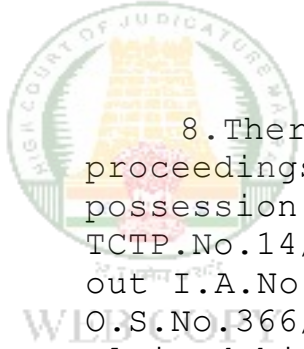
3.While so, the revenue authority has passed an order in TCTP.No.14/07 on 20.04.2016 and based on the said order, the landlord had taken possession of the suit property, pending O.S.No.366/13, filed for injunction not to evict without due process of law. Due to subsequent event, the revision petitioner wants to amend his prayer for delivery of possession instead of permanent injunction, which has now become infructuous.

4.The landlord has filed counter in the said amendment petition and thereafter, the Trial Court has dismissed the amendment petition, on the ground that the proceedings initiated by the landlord for recovery of possession was allowed by the revenue authority in TCTP.No.14/07 dated 20.04.2016. It is a legal process and possession has been delivered as per the procedure established under law. Therefore, the present suit itself is not maintainable in view of the order passed in TCTP.No.14/07 dated 20.04.2016. Further, his attempt to get himself impleaded in the said TCTP.No.14/07 was dismissed by the revenue authority as early as on 29.01.2015. Therefore, the present application to amend the prayer by the revision petitioner lacks merit on fact and law.

5.Aggrieved by the said dismissal order, the present revision petition is filed on the ground that the order passed in TCTP.No.14/07 itself, is by playing deceit upon the court and it is the abuse of process of law. Due to collusion between the landlord and the tenant, the revision petitioner is now been deprived of his possession of the suit property.

6.This Court, after considering the records finds that the 1st respondent/tenant-Mariamammal is none other than the mother-in-law of the revision petitioner. The landlord has initiated eviction proceedings against the tenant Mariammal as early as in 2007 and pending eviction proceedings, the present revision petitioner has first attempted to get himself impleaded in the eviction proceedings TCTP.No.14/07, as if the original tenant Mariammal has transferred her right in his favour and he must be registered as a cultivating tenant.

7.The revenue Court at Tirunelveli, after considering the facts, has dismissed his impleading application on 29.01.2015, recording that this revision petitioner who claims himself as a transferee of lease, has not produced any document to substantiate his claim and furthermore, such a transfer was not recognised by the landlord and without the consent of the landlord, no tenant can sub-lease or transfer the right to third parties. For that reason, his impleading petition was dismissed as early as on 29.01.2015.



8. Thereafter, the revenue court has proceeded with eviction proceedings and has ordered eviction, resulting in delivery of possession to the landlord. After the order passed in TCTP.No.14/07 on 20.04.2016, this revision petitioner has taken out I.A.No.396/16 in O.S.No.366/13, to amend his prayer. The said O.S.No.366/13 itself is not maintainable, since the petitioner has claimed himself as a transferee of a cultivating tenant. There is a special statute to protect the cultivating tenants with the remedy under the Tamil Nadu Cultivating Tenants (Protection) Act, 1955, and therefore, there is a bar for the Civil Court to entertain any suit.

9. The revision petitioner has chosen to resort to Civil Court and also contesting the matter since 2013. The landlord has rightly followed the due process of law and has been pursuing the matter before the revenue authority since 2007. This revision petitioner, who is aware of the proceedings before the revenue authority, has also made an attempt to get himself impleaded in TCTP.No.14/07, but failed. Thereafter, he has now sought to amend the prayer, which is not within the scope of the original suit. Hence, the Trial Court has rightly dismissed the amendment petition.

10. When the revenue court has passed an order after due enquiry and the landlord has taken possession of the vacant land pursuant to that order, by alleging that the said proceedings itself is fraud and collusion. The relief now sought by way of amendment arises out of entirely different cause of action, therefore, the revision petitioner cannot seek an amendment to his original suit filed in the year 2013 for permanent injunction.

Hence, this Civil Revision Petition is dismissed being devoid of merits. No costs. Consequently, CMP(MD)No.2395 of 2017 is closed.

Sd/-

Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar

To

The 1st Additional District Munsif Court,
Tirunelveli.

+1 cc to Mr.D.Nallathambi , Advocate in SR.No. 16951
+1 cc to Mr.P.Senthur Pandian , Advocate in SR.No. 16835

nbi

AE/RR/SAR3/06.04.2017/3P/4C